

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HARRY H. WILLIAMS III and PAULA
WILLIAMS, husband and wife, individually
and the marital community comprised
thereof,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

NO.

COMPLAINT

COME NOW Plaintiffs Harry H. Williams III and Paula Williams, husband and wife, by and through their attorneys Daniel R. Kyler, Vernon W. Harkins, and Benjamin T. Zielinski and Rush, Hannula, Harkins & Kyler, P.L.L.C., and allege as follows:

I. JURISDICTION AND VENUE

1.1 This action is brought pursuant to the authority of the Federal Tort Claims Act ("FTCA"), Title 28 § 1346(b) and §§ 2671 – 2680 of the United States Code.

1.2 Pursuant to 28 U.S.C. § 2675, less than two years after the cause of action arose, Plaintiffs filed and presented administratively a claim for damages on

1 Standard Form 95 to Defendant's agency Department of the Army pursuant to Army
2 Regulation 27-20. More than six months have passed since the claim was filed, and the
3 Department of the Army has failed to resolve this claim. Thus, the option to file suit has
4 now accrued and this action has been commenced within the time limits established by
5 the FTCA.

6 1.3 Attached at Exhibit A are copies of the required claim forms submitted to
7 the Defendant and a copy of the Defendant's response acknowledging receipt of the
8 claims. The Plaintiffs have complied with the filing requirements of the FTCA.

9 1.4 Venue is proper in the Western District of Washington pursuant to 28
10 U.S.C. § 1402(b) as Plaintiffs are residents of the judicial district.

11 1.5 The United States of America may be served with process in accordance
12 with Rule 4 of the Federal Rules of Civil Procedure by delivering a copy of the
13 Summons and Complaint to Nicholas W. Brown, the U.S. Attorney for the Western
14 District of Washington.

15 II. PARTIES

16 2.1 Plaintiffs Harry and Paula Williams are husband and wife, and at all times
17 relevant hereto were and are residents of Tacoma, Pierce County, Washington within
18 the Western District of Washington.

19 2.2 Members of the Army National Guard are "employees of the government"
20 for purposes of claims arising under the FTCA when members are engaged in training
21 or duty pursuant to 28 U.S.C. § 2671. The Defendant is properly named as United
22 States of America pursuant to 28 U.S.C. § 2679.

23
24
25 /////

III. FACTS

3.1 On May 23, 2016, Oregon Army National Guard members were engaged in training exercises at Camp Umatilla, an Army National Guard installation located in Umatilla, Oregon and split between Morrow and Umatilla Counties. The property borders Interstate 82 to the east.

3.2 At approximately 8:13 a.m., a Guardsman discharged a pyrotechnic explosive on a paved roadway near H Block and Ironwood Rd. at Camp Umatilla as part of the training exercises. The area was surrounded by dry brush and grass, and weather conditions were dry and windy.

3.3 The pyrotechnic rolled off the roadway and into the grass, starting a brush fire.

3.4 The National Guard fire crew on duty at Camp Umatilla at the time the pyrotechnic was discharged was called to respond but were unable to contain or control the fire as it spread over the following hours.

3.5 At approximately 10:25 a.m. the Hermiston Fire Department from nearby Hermiston, Oregon was contacted for assistance by the Oregon National Guard and advised that the fire was too large for Oregon National Guard personnel to contain. As the fire continued to spread out of control in 15-20 mph winds towards Interstate 82, Hermiston Fire Department personnel began to arrive on site at approximately 10:30 a.m.

3.6 As the fire spread toward Interstate 82, Plaintiff Harry Williams was traveling eastbound on Interstate 82 on his motorcycle, in traffic with other vehicles.

1 3.7 As Mr. Williams and surrounding vehicles approached Milepost 8 of
2 Interstate 82, a thick cloud of smoke that had previously been in the distance suddenly
3 blew across the roadway and severely inhibited visibility on the roadway.

4 3.8 Mr. Williams was unable to see surrounding traffic in the smoke and his
5 motorcycle struck a vehicle that had stopped in the smoke. Mr. Williams was then
6 struck by a vehicle following him. Multiple other vehicles were also involved in separate
7 collisions in the smokey conditions.

8 3.9 Mr. Williams was seriously injured in the collision caused by the
9 decreased visibility on the roadway and was airlifted from the scene for emergency
10 medical assistance.

11
12 **IV. CAUSE OF ACTION**
13 **(STRICT LIABILITY)**

14 4.1 Plaintiffs re-allege each previous paragraph as if fully set forth herein.

15 4.2 This is an FTCA action for monetary damages sustained by Plaintiffs
16 resulting from personal injuries because of a motor vehicle collision caused by reduced
17 visibility on Interstate 82 due to smoke from a fire started by the Defendant by and
18 through the Army National Guard.

19 4.3 The Defendant engaged in an inherent and abnormally dangerous activity
20 on May 23, 2016, during a training exercise at Camp Umatilla, when it set off
21 pyrotechnics in an area experiencing windy conditions and surrounded by dry grass and
22 brush near Interstate 82.

23 4.4 Plaintiffs Harry and Paula Williams sustained injuries and damages as a
24 resulting consequence of the Defendant's abnormally dangerous activity.
25

1 4.5 Defendant is strictly liable for Plaintiffs' injuries due to its engagement in
2 an abnormally dangerous activity.

3 **V. CAUSE OF ACTION**
4 **(NEGLIGENCE)**

5 5.1 Plaintiffs re-allege each previous paragraph as if fully set forth herein.

6 5.2 Defendant had a duty to exercise reasonable care when planning and
7 choosing to conduct a training exercise utilizing pyrotechnics at the time of the events
8 involved.

9 5.3 Defendant breached its duty of care when the training utilizing
10 pyrotechnics was conducted in windy conditions and in an area surrounded by dry grass
11 and brush and abutting a public interstate highway.

12 5.4 Defendant further breached its duty of care when it failed to provide
13 adequate planning, training, and supervision of its Guardsmen during this training
14 exercise involving the foreseeable danger of fire under the conditions.

15 5.5 Defendant further breached its duty of care by failing to timely warn users
16 of surrounding roadways of Camp Umatilla of possible decreased visibility reaching
17 Interstate 82 from the fire they caused.

18 5.6 Defendant further breached its duty of care by failing to timely seek
19 assistance from nearby civilian fire agencies to contain the spreading fire that was out of
20 control and beyond its ability to contain.

21 5.7 Defendant further breached its duty of care by failing to properly prepare
22 and maintain the land upon which the pyrotechnic training would be conducted and by
23 failing to provide sufficient fire response resources at Camp Umatilla based on the
24 weather and land conditions on the date the injury occurred.
25

5.8 Defendant's conduct created an unreasonable and foreseeable risk of harm to Plaintiffs.

5.9 Plaintiffs' injuries were proximately caused by Defendant's negligent conduct in the manner above described at Camp Umatilla at the time in question.

VI. DAMAGES

6.1 As a direct and proximate result of Defendant's negligent acts and omissions, Plaintiff Harry Williams has incurred past and future medical expenses, wage loss, a future impairment of his ability to earn income and additional out-of-pocket expenses as a result of the subject collision.

6.2 As a direct and proximate result of Defendant's negligent acts and omissions, Plaintiff Harry Williams has incurred past and future non-economic damages including pain, suffering, inconvenience, mental anguish, emotional harm, disfigurement, impairment, loss of society and companionship, and loss of consortium and enjoyment of life in an amount to be proven at trial.

6.3 As a direct and proximate result of Defendant's negligent acts and omissions, Plaintiff Paula Williams has suffered past and future loss of consortium including the loss of fellowship, company, affections, care, services, companionship, and assistance of her husband in an amount to be proven at trial.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against the Defendant for all special and general damages as alleged herein and to be further proven at trial, for an award of pre-judgment interest on economic and non-economic damages, costs and attorney fees, and for such other and further relief as may be just and equitable.

1 DATED this 29th day of August, 2022.

2
3 RUSH, HANNULA, HARKINS & KYLER, P.L.L.C.
Attorneys for Plaintiffs

4 By: 
5 Daniel R. Kyler, WSBA #12905

6 By: 
7 Vernon W. Harkins, WSBA #6689

8 By: 
9 Benjamin T. Zielinski, WSBA #43670
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25